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We are of opinion that there is no error in the decree appealed from, and that it must be affirmed.

Affirmed.

Note.

In the principal case the court decides that under our statute "indexing" is a part and a necessary part of docketing of a *lis pendens*. It is difficult to see how any other conclusion could have been reached under a statute so clear. The statute expressly provides that the memorandum setting forth the title of the cause, the general object thereof, etc., shall be recorded by the clerk of the court in the deed book and indexed by him in the name of the person whose estate is intended to be affected thereby.

In 21 Encyc. Law, 2nd Ed., it is said: "It is not necessary to the commencement of the *lis pendens* that the notice of pendency or the pleadings be indexed or recorded, where the statutes only require filing, or where the duty to index or record is only ministerial. The indexing or recording, or both, of notices of pendency are, however, essential to the *lis pendens* under some statutes."

MARTZ, CLERK, *v.* ROCKINGHAM COUNTY.

Nov. 17, 1910.

[69 S. E. 321.]

1. Statutes (§ 190*)—Construction.—Where the language of a statute is ambiguous, the court in construing it will give that construction which will be the more reasonable and just; but the court must give effect to the plain language of a statute, however absurd the result may be, and leave it to the Legislature to make the proper changes.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 266, 269; Dec. Dig. § 190.*]

2. Clerks of Courts (§ 24*)—Compensation—Statutes.—Act March 3, 1908 (Laws 1908, c. 130), requiring the clerk of the circuit court to make and certify copies of the list of persons who have paid the poll taxes, and providing that for copying and certifying the list he shall be allowed two cents for each ten words for the first copy, "and one-half cent for each ten words for all other copies required," when considered in the light of the history of the act, as originally enacted by Act March 10, 1904 (Laws 1904, c. 89 [Code 1904, § 86b]), and the compensation fixed for other officers for prescribed duties with reference to the poll list, gives to the clerk a half cent for

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

each ten words for all copies required in addition to the first copy, and does not give him a half cent for each ten words of each of all copies in addition to the first.

[Ed. Note.—For other cases, see Clerks of Courts, Dec. Dig. § 24,*]

Appeal from Circuit Court, Rockingham County.

Proceedings by one Martz, Clerk of the Circuit Court, to establish a claim against the County of Rockingham. From an order of the circuit court, affirming the decision of the supervisors of the county disallowing the claim in part, claimant appeals. Affirmed.

Edward C. Martz, for appellant.

Conrad & Conrad, for appellee.

BUCHANAN, J. The plaintiff in error, the clerk of the circuit court of Rockingham county, presented to the board of supervisors of that county his account for preparing lists of all persons having paid their poll taxes six months prior to the November election, 1910, and for certifying the same, as provided by an act of assembly approved March 3, 1908. This account is as follows:

First copy, 13,750 words, 2 cents for each ten words.....	\$ 27 50
62 additional copies, 13,750 words each, ½ ct. for each ten words	426 25
Total acct.	\$453 75

The board of supervisors allowed him \$34.37 for preparing and certifying copies of the list, and \$47.50, the cost of printing the same. From that action of the supervisors the clerk appealed to the circuit court, which affirmed the action of the board of supervisors. In doing so, the court, in its written opinion filed with the record, held that the sum of \$34.37 allowed by the supervisors for copying and certifying the said list was the full compensation authorized to be paid by the act of assembly; that there was no authority of law for allowing the \$47.50 for printing the list, but, as there was no objection made to that allowance on the part of the county, the court would affirm the action and order of the board of supervisors. To the order of the circuit court this writ of error was awarded.

By the act of March 3, 1908 (Laws 1908, c. 130), it is made the duty of the treasurer of each county and city to make, at least five months before the second Tuesday in June and each regular election in November, a list of all persons in his county or city who have paid not later than six months prior to each

of said dates the state poll taxes required by the Constitution as a prerequisite to voting, with the clerk of the circuit court of his county or of the corporation court of his city. The clerk, within ten days after the receipt of the list so filed by the treasurer, is required to make and certify as many copies of said list as there are voting places in said county or city, and deliver the same to the sheriff or sergeant of his county or city. The clerk is further required to make, certify, and keep in his office for public inspection not less than ten copies of the said treasurer's list. After the said list has been corrected as provided by section 2 of the act, the clerk is required to deliver or cause to be delivered a reasonable time before any election to one of the judges of election of each precinct in the county or city a like certified copy of such corrected list, and also to forward to the auditor of public accounts a copy thereof.

The compensation for these services is fixed by section 4 of the act, and is as follows:

"For making and certifying such list the treasurer shall be allowed three cents for each ten words, counting initials as words, and the clerk, for copying and certifying the same, shall be allowed two cents for each ten words, counting initials as words, for the first copy, and one-half cent for each ten words for all other copies required to be made. The sheriff or sergeant posting the list shall receive twenty-five cents for each list which he posts."

Under the provisions of the section quoted it is plain that the clerk is entitled to two cents for every ten words of the first copy of the list made by him. The matter in controversy is what compensation he is to receive for the other copies required to be made.

The clerk's contention is that he is entitled to receive a half cent for every ten words of *each additional copy*. On the other hand, the board of supervisors insist that for the additional copies made the clerk is entitled to one-half cent for each ten words of the list as compensation for the whole number of additional copies, and not for each additional copy required.

The trial court was of opinion that, while the language used was not the best that might have been chosen, yet that the natural grammatical import of the words used was that the clerk should receive one-half cent for each ten words of the list as compensation for all other copies required. In reaching that conclusion the court said: "The language is, 'one-half cent for each ten words for all other copies required.' If it said, 'one-half cent for each ten words of each of all other copies required,' or 'one-half cent for each ten words of each of the other copies required,' or 'one-half cent for each ten words for

each of the other copies required,' the effect would be different. But the language means and is equivalent to 'one-half cent for each ten words of the list as compensation for all other copies required.' That is the natural grammatical import of the words used."

If this is the plain meaning of the language used, then the construction reached by the trial court was clearly right. But if that be not its plain grammatical meaning, it will justify the conclusion given it by the trial court at least as well as that contended for by the appellant. Treating the language as ambiguous, the court in construing it may consider which of the two constructions insisted upon is the more reasonable and just, and will best harmonize with the legislative intent as gathered from the whole legislation on the subject. See *Immigrant Society, etc., v. Com.*, 103 Va. 46, 48 S. E. 509, and authorities cited.

By the act of March 10, 1904 (Laws 1904, c. 89 [Code 1904, § 86b]) which the act of March 3, 1908 amends, the compensation of the clerk for the same services is fixed at "two cents for each ten words, counting initials as words, for the first copy, and the actual reasonable costs of printing or otherwise making, in the cheapest way obtainable, the other copies which he is required to make."

It is apparent from this provision of the act, as well as from the small compensation allowed the treasurer, the sheriff, and the sergeant for the services required of them in carrying out its provisions, that the Legislature did not intend to impose upon the counties and cities any greater charge for the services rendered by these public officials than their services were reasonably worth. When that act was amended by the act of March 3, 1908, no change was made in the compensation fixed for the services of the treasurer, sheriff, and sergeant. But if the contention of the appellant clerk is correct, the Legislature intended that he should receive for his services, not what they were actually or reasonably worth, as did the other officers mentioned, but several times as much.

The treasurer of Rockingham county, for collecting the material, separating the names of white and colored voters, and making out the said list alphabetically, was entitled to the sum of \$41.25, and the sheriff, for posting the lists furnished him at the 76 voting precincts in the county, was entitled to the sum of \$6.50, while the clerk for his services would be entitled to the sum of \$453.75—five or six times as much as his services were actually worth, if he had the copies printed, as he had the right to do, and as he did do. No reason is given, and none

exists, so far as we can see, why, in carrying out the provisions of the act, the treasurer, sheriff, and sergeant should be required to perform the duties imposed upon them by the act in the interest of the people for what their services are actually worth, or less, and the clerk should receive as compensation for performing the duties imposed upon him five or six times what such services are worth. If the language of the act fixing his compensation plainly gave him this exorbitant compensation, it would be the plain duty of the court to so decide, for, however absurd or unjust a law may be, it is the duty of the courts to give it full effect, and leave it to the Legislature to amend or make such changes in the law as it may deem proper; but where the language of the act is ambiguous, the courts will give that construction to it which will be the more reasonable and just, and such was the construction placed upon it by the trial court, in our opinion.

It may be true, as argued, that the compensation which the clerks will receive under the construction placed upon the act will be less than their services are worth, or the necessary expenses of performing the duties imposed. This we think is true also in the case of treasurers, sheriffs, and sergeants for performing the services required of them.

Upon the whole case, we are of opinion that the order complained of should be affirmed.

Affirmed.

Note.

A wide-spread interest has been shown in this case. We understand it has been the practice in nearly all of the counties to charge upon the basis which the Clerk of the Court in Rockingham adopted, thus, the public treasury was being relieved of an exorbitant amount for services rendered; in other words, on the basis on which the clerks were charging, the clerk of Rockingham would have received \$453.75, whereas on the basis of the decision of the Circuit Court only \$27.50 was the amount the Clerk was entitled to. The taxpayers of Virginia by this decision are saved probably \$10,000.

SOUTHERN RY. CO. v. JOHNSON'S ADM'X.

Nov. 17, 1910.

[69 S. E. 323.]

1. Master and Servant (§ 243*)—Death of Servant—Railroads—Operation—Violation of Rules.—No recovery can be had for the death of a railroad engineer, resulting from a collision caused by his will-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.